

FILED

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2017 NOV -2 P 4: 24

MICHAEL POLSON, in his individual capacity  
817 Carlton Otto Lane #23, Odenton, MD 20120  
c/o and including Dontae Sylvertooth, Asst US Attorney  
and counsel for Transportation Security Administration (TSA)  
Nathan Scott Bryant, Counsel for SSI for TSA,  
Dennis Barghaan, Asst US Attorney,  
Dana Boente, US Attorney  
2100 Jamieson Ave, Alexandria, VA 22314  
(703) 299-3738 ph; (703) 299-3983 fax

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

CAPT. JAMES LINLOR, pro se	) Case No.: 1:17cv13 (AJT/JFA)
Plaintiff,	)
v.	) <b>PLAINTIFF'S NOTICE OF VIOLATIONS OF</b>
	) <b>FRCP 403, PLUS PENDING REQUESTS</b>
	) <b>UNDER FRCP 11, FRCP 26(g), and FRCP</b>
	) <b>37(b) FOR SANCTIONS AND REQUEST TO</b>
	) <b>CURE INCLUDING WITHDRAWAL OF TSA'S</b>
MICHAEL POLSON,	) <b>MISLEADING REPLY OF 31 OCTOBER</b>
in his individual capacity	) Memorandum of Points and Authorities
Defendant	)
	) Served 02 November 2017
	) Responses due per FRCP 11 within 21 days

1. On 31 October 2017, TSA attorneys Sylvertooth and Bryant, and DOJ attorneys Barghaan and Boente filed a MISLEADING and UNTRUE pleading, against FRCP 403.
2. Specifically, TSA claimed (contrary to the conversation's transcript herein) that
  - a) Plaintiff is seeking the TSA's SOP when the conversation proves he is not!  
Quote from transcript herein from Plaintiff, contrary to TSA's filing: **"I'm not looking for SOP. I'm looking for the information depending on where it may have been originally sourced from."** On this basis alone, TSA's Motion **FAILS**. Yet more evidence supporting DENIAL of TSA's Motion exists as listed herein.
  - b) TSA claimed Plaintiff has no right to pressure evidence regardless of any level of cooperation Plaintiff provides (and did not inform the Court of this position); and
  - c) TSA disparaged Plaintiff's professional pilot certifications without evidence or merit, and then claimed without evidence that TSA's false accusations were more than salacious

1 hearsay. ALL ARE UNTRUE AS DEMONSTRATED HEREIN!

- 2 3. Plaintiff provides a transcript of the relevant meet-and-confer section herein, and is glad  
 3 to lodge and file the full recording if ~~Defendants~~<sup>TSA</sup> wish to challenge Plaintiff's veracity,  
 4 under their own penalty of perjury if they do so since Plaintiff has accurately represented  
 5 the conversation (disfluencies and crosstalk, aside).
- 6 4. If the attorneys listed do not withdraw their false and misleading motion immediately,  
 7 Plaintiff notices the attorneys and their clients TSA and DOJ (Transportation Security  
 8 Administration, and Department of Justice, respectively), that Plaintiff, under FRCP 11(c)  
 9 is providing a 21 day notice prior to filing of a Motion for Sanctions against all  
 10 individuals and agencies for whom/which defects are not cured by that time.
- 11 5. Under FRCP 11 and the 1993 Amendment, sanctions may be imposed on attorneys, as  
 12 well as government agencies.
- 13 6. Under FRCP 26(g)(1)(B), sanctions may be imposed for violations, among other items:  
 14 (i) consistent with these rules and warranted by existing law or by a nonfrivolous  
 15 argument for extending, modifying, or reversing existing law, or for establishing new  
 16 law;  
 17 (ii) not interposed for any improper purpose, such as to harass, cause unnecessary  
 18 delay, or needlessly increase the cost of litigation;
- 19 7. Under FRCP 37(b) for failure to comply with a Court Order.
- 20 8. Plaintiff requests that attorneys and agencies named herein each reply, first to remove  
 21 their FALSE AND MISLEADING Motion immediately, then to clarify and cure  
 22 responses to the questions below. Plaintiff does not warrant, limit, or waive any rights to  
 23 change, amend, or alter applications of Rules as allowed by FRCP.

## 24 MEMORANDUM OF POINTS AND AUTHORITIES

### 25 Issues:

- 26 1. TSA is falsely claiming that Plaintiff is insisting on TSA's SOP (see TSA's Motion,  
 27 section B beginning on page 3 through page 6, line ~18; Plaintiff believes and has  
 28 reminded TSA's attorneys that Plaintiff believes that they could comply with the  
 subpoena "by finding the pressure and excessive force guidance from some other  
 document than the SOP; TSA has more than one document, and even information later

1 put into the SOP derives from other documents, that you have not demonstrated that you  
2 have attempted to produce, nor provided justifications under Gordon v. FBI.”

- 3 2. TSA is claiming that ALL documents it has, including documents it claims ARE  
4 responsive to the Court’s approved Subpoena for pro se Plaintiff, that ALL documents are  
5 folded in to the SOP (standard operating procedure) even if they originated and are still  
6 held in other documents. In other words, this is exactly what the Court in Gordon v. FBI  
7 (ND Calif, 2004) found TSA guilty of doing! Plaintiff does **not** ask to receive TSA’s SOP  
8 (Plaintiff even explicitly DENIES any such intent as shown in the transcript below!) but  
9 rather ONLY the specific relevant pressure and non-excessive force evidence as is  
10 appropriate. Plaintiff: **“I’m not looking for SOP. I’m looking for the information  
depending on where it may have been originally sourced from.”**

11 This is also contrary to the controlling statute of 49 USC 114(r) requiring that  
12 information related to a crime not be withheld, and that no other provision of law takes  
13 precedent over 49 USC 114(r) per its wording.

- 14 3. Defendants claim that they somehow have authority to vet Plaintiff’s credentials, without  
15 recognizing TSA’s existing disclosure already recognizing commercial pilots as having  
16 standing as aircraft operators for SSI. To argue this point is ludicrous, and similar to  
17 TSA’s taking away fingernail clippers from pilots! Plaintiff has a faster, alternate  
18 method, albeit hypothetical and not inviting nor granting any attorney any waiver of  
19 criminal action should they foolishly attempt the following hypothetical: if either/any  
20 attorney in this case wishes to step onto a flight commanded by Plaintiff, and would  
21 decide to cause a disturbance/misbehave resulting in a danger to air safety, Plaintiff might  
22 (in theory and hypothetically, not to be interpreted as a threat or guaranteed use of  
23 Plaintiff’s inherent authority including locally under VA code as a special conservator of  
24 the peace when in command of an aircraft) be compelled as a matter of safety to properly  
25 arrest and have the attorney(s) placed in handcuffs and taken to jail for processing.  
26 Plaintiff merely asks for the attorney(s) to coordinate any such per-meditated action in  
27 advance with Plaintiff, so Plaintiff can have the FBI and a TV news crew standing by, to  
28 document and respond to the attorney(s)’ misdeeds, while protecting the safety of  
Plaintiff’s crew, the flying public (passengers), and aircraft.



1 TRANSCRIPT OF MEET-AND-CONFER PHONE CALL OF 30 OCTOBER 2017:

2 Plaintiff (starting around the 7 minute mark): "You keep expanding what you describe I'm  
3 claiming, which I believe is inaccurate and misleading. I've read the regulations you're talking  
4 about for need to know, and we agree to disagree on that. But what I'm asking about is the very  
5 specific force and pressure guidelines. And, if you want to have a discussion on some of this,  
6 even the demand you have that this is SSI, the first thing you have to do, under Gordon, is to go  
7 and make a claim as to how the specific items that I'm looking for are SSI. And if you don't  
8 meet Gordon v. FBI on that, then I'm not going to agree that any of this even is SSI, and  
9 therefore you have no standing to make that claim. Are you going to go – and my question to  
10 both of you [Sylvertooth and Bryant] please, gentlemen, is are you going to go and make an  
11 explanation, following the rules set forth by the Court in Gordon v. FBI, and explain the specific  
12 items listed on the subpoena – why you claim that those are SSI. That's my question to you,  
13 please."

14 DOJ & TSA Attorney Sylvertooth: "So, I think that there's a little confusion here. I hear what  
15 you're saying in regards to what's on the subpoena. TSA has reviewed the subpoena – I've  
16 reviewed the subpoena – we've identified documents that are responsive to the subpoena. Those  
17 documents include the three sets of documents that you received at the deposition on October  
18 20<sup>th</sup>, and the other aspect that would be potentially covered by the subpoena is a portion of the  
19 SOP manual, which is part of the objections. TSA has already determined that the SOP is SSI.  
20 So, we don't need to go through any other Gordon v. FBI standards that you alluded to, and oh,  
21 by the way, I do not even think is applicable to this case, but TSA has already identified the  
22 entire SOP, which is what is at stake with regards to the objection, as SSI. So, the Administrator  
23 has already issued a final order on that."

24 TSA Attorney Bryant: "Dontae, can I clarify a little bit too, maybe? Capt. Linlor, what you  
25 asked for is guidance about pressure. And so, we have determined that there is some guidance  
26 about pressure within the SOP – within one particular chapter of the SOP. But the SOP itself –  
27 all parts of it – even the chapter that we believe may have some responsive information – are  
28 already designated as SSI that can't be released, and they're designated in two ways: first, the

1 regulation itself says that the SOP is SSI, and second, there is a final order of the TSA  
 2 administrator that says that the SOP is SSI: no part of it can be disclosed."

3 [NOTE: This is false, since the SOP's Table of Contents was released under a FOIA request (see  
 4 Exhibit A). TSA is lying. This claim of no part of the SOP being able to be released is also  
 5 contrary to 49 USC 114(r), and TSA has been repeatedly offered protective orders, or even *en*  
 6 *camera* reviews, and declined all attempts to assess the relevant and true SSI nature of any  
 7 responsive information from any document, memo, email, or powerpoint training slide. TSA is  
 8 stonewalling, and their behaviors support Plaintiff's contention of continued bad faith by TSA.]\*

9 Plaintiff: "Well, that's the end of that conversation, then. You can just withhold it under your  
 10 claim, we'll see if your claim gets overridden or not. I believe that I've stated enough points, but  
 11 I'm not going to go through the hoops you're talking about, because it's going to fall outside of  
 12 the process of the discovery order defined by the Court anyways, and I disagree that it is  
 13 necessary based upon my standing. So, is there anything else we need to discuss?"

14 Attorney Sylvertooth: "No, if you're not interested in by trying to resolve it by going through  
 15 the process that TSA has outlined and that's in section 525(d) then I don't think there's anything  
 16 else because we don't even have the requisite information from you, to confirm whether or you  
 17 actually fall as a covered employee, other than you said you are a certified airline captain. We  
 18 have <sup>no</sup> ~~know~~ knowledge regarding that, and so, if you provide us with the minimum information to  
 19 determine whether you are a covered person, the problem still becomes as Nathan identified, is  
 20 that you don't meet the requirements of SSI for need to know, under the regulations. I know that  
 21 we have a difference of opinion on that. So, what we were trying to do is to get you to the point  
 22 of a need to know for being a covered person under section 525(d), but if you're not interested in  
 23 that, then I ..."

24 Plaintiff: "It's not that I'm not interested, it's that – several different things, Mr. Sylvertooth: we  
 25 disagree that it is applicable, we disagree that I'm going to go and submit to process which  
 26 you're already saying which is not going to have an end state where it would even be allowed to  
 27 be disclosed anyway, I'm not going to go and dangle my, 'ooh, getting to go and see something  
 28 SSI that I see all the time,' since the Defendant ... okay, not Defendant but 3<sup>rd</sup> party TSA's

1 decision whether or not to go and grant me access by the grace of the King, to go and have  
 2 access to something that I already have access to. So, I'm not going to go and subjugate myself  
 3 to a process. It's not a question of being interested or not interested. You've already laid too  
 4 many roadblocks in this, and it is the fox guarding the henhouse! So the fact that you're going  
 5 and saying if I go and do all these things, **and I'm not interested in the SOP**. I'm interested in  
 6 if there are, you know, three sentences or something. Now, you haven't shown that you've taken  
 7 the steps required that I've always laid out previously, that you are required to go and do. Now  
 8 you said that there's been a final determination. I don't see where you have made the good faith  
 9 effort to try and have the level of pressure or non-excessive force disclosed. So, I don't see that  
 10 you've met any of the standards you are required to, I'm certainly not going to subjugate myself  
 11 to something else that you are putting out there, and right now, you're putting nothing in writing,  
 12 we're doing everything off the cuff, here, and I'm answering your questions; I think that's  
 13 closed. Unless you've got something else, I've got to run on with my day, and you can write  
 14 and file what you want, but if represent that I'm not interested because I just don't want to  
 15 cooperate, that's misleading and incorrect, and I will go and counter that. "

16 Attorney Sylvertooth: "All right, Capt. Linlor, I understand your position. I don't think there's  
 17 anything further to discuss. Nathan, anything further from you?"

18 Attorney Bryant: "I just do want to clarify: so, I heard you say there that you were not  
 19 interested in the SOP, but, you do intend to seek the portions of the SOP that are responsive to  
 20 your inquiry about pressure, or you don't intend to seek that information?"

21 Plaintiff: "I intend to see the specific details, wherever they are coming from. And because I  
 22 don't know what I don't know, the details regarding excessive force and pressure may be in the  
 23 SOP, they may very well just as likely be in some other documents that are not SSI either, and  
 24 so there isn't necessarily a single point of source with these, that there would not be some means  
 25 to go and release the information. And if you say that there is no <crosstalk> .. let me say one  
 26 more thing, please. And if you say that you don't have any releasable information, that's fine.  
 27 However, then you have no evidence to prove that there was not – that there is a standard, which  
 28



1 has already been claimed by your former partner Ms. Murley. So you guys will have nothing to  
 2 stand on.”

3 Attorney Bryant: “Can I just ask my specific question is, to the extent that those details that you  
 4 are talking about – to the extent those details are in the SOP, you do or do not intend to seek  
 5 them?”

6  
 7 Plaintiff: “I haven’t decided right now, but I’ll tell you this from a language standpoint, commas  
 8 and periods and spaces are in the SOP also, and I don’t think you can lay claim to those, either.  
 9 I’m just saying that I have not decided my answer as to seeking things in the SOP or not, I  
 10 haven’t decided on my answer to that, and the other part is, the fact that the TSA is taking  
 11 information from other documents, and then wrapping it into the SOP, to be able to assert  
 12 privilege claims of SSI, when that information is available in other documents where there are no  
 13 claims to SSI, has not been answered by TSA. Or by anyone. So, I’m saying that I’m not  
 14 seeking to go and say that it has to be out of the SOP – the information that I’m looking for –  
 15 I believe as responsive information was in some part other than the SOP before you wrapped it  
 16 into there, and because there’s been no explanation of how that information is SSI, I’m looking  
 17 to see wherever that information came from. The point is, to find information to arrive at the  
 18 truth in this case, not to go and say, well, it has to be SOP. I’m not looking for SOP. I’m  
 19 looking for the information depending on where it may have been originally sourced from.”

20 Attorney Sylvertooth: “Okay. I don’t have anything. Nathan?”

21 Attorney Bryant: “No, nothing else, thanks”

22 Attorney Sylvertooth: “All right Capt. Linlor. We cannot reach agreement on this, and that’s  
 23 unfortunate at this time, but we’ll go from there.”

24 Plaintiff: “All right. Thank you both. Bye bye.”

## 25 SPECIFICS OF RESPONSES REQUIRED TO CURE PLANNED MOTIONS FOR 26 SANCTIONS

27 Attorneys/Agencies from whom a response is requested, or via their counsels for TSA:

28 A) TSA, served via its attorneys in this case, Mr. Sylvertooth and Mr. Bryant

- B) DOJ, served via its attorneys in this case, Mr. Sylvertooth, Mr. Barghaan, and Mr. Boente
- C) Dontae Sylvertooth, Esq. in his capacity as Counsel for TSA and DOJ in this case
- D) Dennis Barghaan, Esq., Deputy Chief, Civil Division, Department of Justice
- E) Nathan Scott Bryant, Esq., Office of Chief Counsel, TSA
- F) Dana Boente, Esq., US Attorney, Department of Justice

Counsels are named and individual responses are requested because counsels have each signed documents in this case, and explanations for apparent non-compliance are required prior to a potential Motion for Rule 11 sanctions. You have signed papers or represented as an attorney-of-record on behalf of the DOJ and/or TSA where you misrepresented facts of a meet-and-confer and Plaintiff's good-faith attempts to resolve issues, allegedly in attempts to mislead the Court.

Material facts transcript of the meet-and-confer of 30 October 2017, and according misrepresentations to the Court you are requested to cure to avoid filing of Motions for Sanctions in this matter:

1. In what documents or analyses, drafts, emails, or papers were the force and pressure guidelines documented before they were included in the SOP, that may contradict your implications that none of this information has ever been present at any time in any other documents, what are those documents named and dated (released), and what efforts have you each made to have those documents released as per the control of Mr. Whetsell?
2. The SOP's table of contents has been publicly released under FOIA, demonstrating that the entire SOP is not SSI (contrary to TSA's claims). Identify in which chapter and sub-part section (per the SOP's Table of Contents in Exhibit A) TSA alleges that responsive information to Plaintiff's subpoena exists, and the publication date of that copy of the SOP.
3. Please list the justifications required under Gordon v. FBI for the force and pressure guidelines (as located in any document or at any point) to support any claims that these guidelines are SSI from the moment they are written down (even in draft form) through



1 to whatever publication they are included in, and the documented and proven chain-of-  
2 custody and designation as SSI throughout their entire lifespan in written form in an  
3 context or medium.

- 4
- 5 4. What documents other than the SOP govern or contain any part of any excessive force  
6 and pressure standards, training, assessment, evaluation, or use as more fully described  
7 on the Court-approved Subpoena in this matter?
- 8 5. If pressure and excessive force standards are only in the SOP, then how are training,  
9 testing, and evaluations done, since none of the materials provided so far for those  
10 activities, cover those aspects? Similarly, where are the designations and claims (under  
11 Gordon) that those documents are SSI, please produce them throughout those documents'  
12 life history from inception through to the present.
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EXHIBIT A

U.S. Department of Homeland Security

Freedom of Information Act Office  
Arlington, VA 20598-6020



Transportation  
Security  
Administration

JUN - 2 2009

FOIA Case Number: TSA09-0303

This letter is in response to your Freedom of Information Act (FOIA) request dated February 3, 2009, in which you are requesting the following information.

1. A copy of the SecOps Procedures Branch – Management Standard Operating Procedures (Table of Contents Only)
2. A copy of the SecOps Procedures Branch – Checked Baggage Screening Standard Operating Procedures (Table of Contents Only)
3. A printout of a listing or index of manuals and procedures manuals produced by the SecOps Procedures Branch.

Your request has been processed under the FOIA, 5 U.S.C. § 552.

A search within the Transportation Security Administration (TSA) was conducted and documents (nine pages) responsive to your request were located. These documents have been reviewed and eight pages are being released to you in their entirety. However, portions of one page are being withheld pursuant to Exemption 2 of the FOIA. A more complete explanation of this exemption is provided below.

Exemption 2 of the FOIA exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of any agency.” The courts have interpreted the exemption to encompass two distinct categories of information: (1) internal matters of a relatively trivial nature – often referred to as “low 2” information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement – often referred to as “high 2” information.

We have determined that certain portions of the requested records are properly withheld from disclosure as “high 2” information, in that they contain internal administrative and/or personnel matters to the extent that disclosure would risk circumvention of a regulation or statute or impede the effectiveness of law enforcement activities. A more detailed explanation follows.

Sensitive materials are exempt from mandatory disclosure under “high 2” when the requested documents are predominantly internal, and disclosure significantly risks circumvention of a

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1  
2  
3 regulation or statute, including civil enforcement and regulatory matters. Whether there is  
4 any public interest in disclosure is legally irrelevant. Rather, the concern under "high 2" is  
5 that a FOIA disclosure should not benefit those attempting to violate the law and avoid  
6 detection.

7  
8 The fees incurred to process your request do not exceed the minimum threshold necessary for  
9 charge and, therefore, there is no fee associated with the processing of this request.

10  
11 In the event that you may wish to appeal this determination, an administrative appeal may be made  
12 in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation  
13 Security Administration, 601 South 12<sup>th</sup> Street, East Building, E7-121S, Arlington, VA 20598-  
14 6033 Your appeal **must be submitted within 60 days** from the date of this determination. It  
15 should contain your FOIA request number and state, to the extent possible, the reasons why you  
16 believe the initial determination should be reversed. In addition, the envelope in which the appeal  
17 is mailed in should be prominently marked "FOIA Appeal." Please note that the Special  
18 Counselor's determination of the appeal will be administratively final. If you have any questions  
19 pertaining to your request, please feel free to contact the FOIA Office at 1-866-364-2872 or  
20 locally at 571-227-2300.

21  
22 Sincerely,

23  
24 

25  
26 *for* Kevin J. Janet  
27 FOIA Officer  
28 Freedom of Information Act Office

Enclosure

www.tsa.gov



Revision: 3, Change 3

Date: July 1, 2008

Implementation Date: July 1, 2008

~~SENSITIVE SECURITY INFORMATION~~

Screening Management SOP

## AVIATION SECURITY

# SCREENING MANAGEMENT STANDARD OPERATING PROCEDURES



Transportation  
Security  
Administration

Transportation Security Administration (TSA) personnel and contractors must use and implement these standard operating procedures in carrying out their functions related to security screening of passengers, accessible property and checked baggage. Nothing in these procedures is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties. See *United States v. Caceres*, 440 U.S. 741 (1979).

~~SENSITIVE SECURITY INFORMATION~~

**WARNING:** THIS RECORD CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER 49 CFR PARTS 15 AND 1520. NO PART OF THIS RECORD MAY BE DISCLOSED TO PERSONS WITHOUT A "NEED TO KNOW," AS DEFINED IN 49 CFR PARTS 15 AND 1520, EXCEPT WITH THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION OR THE SECRETARY OF TRANSPORTATION. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTIES OR OTHER ACTION. FOR U.S. GOVERNMENT AGENCIES, PUBLIC DISCLOSURE GOVERNED BY 5 U.S.C. 552 AND 49 CFR PARTS 15 AND 1520.

Revision: 3, Change 3  
 Date: July 1, 2008  
 Implementation Date: July 1, 2008

~~SENSITIVE SECURITY INFORMATION~~

Screening Management SOP

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Date: July 1, 2008

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Screening Management SOP

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1 NO ATTORNEY ASSISTED IN THIS DOCUMENT'S PREPARATION.

2 I certify under penalty of perjury, that a copy of this document was conveyed on  
3 02 November, 2017 to be served on all parties, via mailing to the Clerk of the Court for  
4 filing with the CM/ECF Court Filing System.

5 Local Rule 7(E) and 37(E) Certification per Scheduling Order of 06 September 2017:

6 "Pro Se Plaintiff confirms that he has attempted, in good faith, to confer with and to  
7 decrease and/or resolve any matters of disagreement related to discovery with  
8 Defendant's Counsel, and to decrease, in every way possible, the filing of unnecessary  
9 motions."

10 Respectfully submitted, and filed with the declaration that all statements in this pleading  
11 are true and correct under penalty of perjury.

12 Date 11/2/17 Signed JK (Capt. James Linlor)

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